
(2003) 08 GAU CK 0014
In the Gauhati High Court
Case No : WP (C) No. 186 (AP) of 2002

Meyom Karge

APPELLANT

Vs

State of Arunachal Pradesh

RESPONDENT

Date of Decision : 08-08-2003

Acts Referred:

Citation : (2004) 1 GLR 460 : (2005) GLT 623 Supp

Hon'ble Judges : I.A. Ansari, J

Bench : Single Bench

Advocate : C. Barua, H. Rahman and R. Saikia, for the Appellant; B.L. Singh, G.A. AP, for the Respondent

Judgement

I.A. Ansari, J.—Whether the period of service, which a government servant, though qualified for promotion, spends on officiating basis uninterruptedly on a promotional post, shall be counted for the purpose of seniority, when his promotion is regularized, is the moot question, which arises for consideration in the present case.

2. The petitioner in this writ petition was, on 12.5.1988, appointed as Junior Engineer (Electrical), hereinafter called "JE(E)", in the Department of Power, Government of Arunachal Pradesh. On 14.7.1997, the petitioner was appointed on officiating basis to a vacant post of Assistant Engineer (Electrical), hereinafter referred to as AE(E). Similar to the petitioner, 5 other persons were also appointed, on 20.8.1997, as AE(E) on officiating basis against vacant posts. As per the Arunachal Pradesh Power Engineering Service Rules, 1993 (hereinafter referred to as "the relevant Recruitment Rules"), a diploma holder with 10 years' experience in the grade of JE is eligible for promotion to the post of AE. Being a diploma holder, the petitioner became eligible for promotion to the post of AE(E) on 12.5.1998. The petitioner, accordingly, on 26.5.1998, made a representation to the Commissioner to the Government of Arunachal Pradesh, Power Department, seeking promotion to the post of AE(E) with effect from 12.5.1998 on the ground that he had become eligible for such promotion with effect from

12.5.1998 and he had been performing the duties and functions of AE(E) on ad hoc/officiating basis against a vacant post. No action was taken by the authority aforementioned on the representation of the petitioner. Thereafter, in Civil Rule No. 5942/1998, this Court by order, dated 27.11.1998, directed the respondent-authorities to consider the petitioner's representation for regularization of his officiating promotion. While disposing of the representation, as directed, the Commissioner of Power, vide order, dated 12.3.1999, directed that the petitioner's case would be processed for regular promotion subject to availability of vacancy with effect from the date when he had completed the requisite qualifying period of service, i.e., with effect from 12.5.1998. There were altogether 12 vacancies in the posts of AE(E) in the promotional quota and all these posts were physically occupied by the incumbents on officiating basis including the petitioner. As per the recommendations of the Departmental Promotion Committee, (for short, "DPC"), the petitioner has, now, been granted regular promotion to the post of AE(E), but the promotion, so granted, has been made effective from 12.3.2001. The petitioner's grievance is that his promotion ought to have been granted with effect from 12.5.1998, when he had become eligible for promotion, for, there was a vacancy available for such promotional appointment and the petitioner had been functioning as AE(E) on officiating basis uninterruptedly since long before 12.5.1998 until regularization of his promotion on 12.3.2001.

3. I have perused the materials on record. I have heard Mr. C. Barua, learned senior counsel, assisted by Mr. R. Saikia, learned counsel, appearing for the petitioner, and Mr. B. L. Singh, learned senior Government Advocate, Arunachal Pradesh, appearing for the respondents.

4. In the case at hand, the facts are not under any controversy. It is not in dispute that the petitioner became, under the relevant Recruitment Rules, eligible for promotion on 12.5.1998. It is also not in dispute that on the date, when the petitioner became so eligible for promotion, he was occupying the promotional post and he continued to do so until the time he was granted regular promotion on 12.3.2001. It is also important to bear in mind that it is not in dispute that the post of AE(E) which he kept occupying belonged to the quota of promotees in the Department concerned and that even the ultimate promotion granted to the petitioner is also in respect of the post, which falls under the promotional quota. In the face of these admitted facts, there can be no escape from the conclusion that when the respondent-authorities, eventually, decided, on the recommendations made by the DPC, to promote the petitioner to the post of AE(E), his promotion ought to have been allowed to relate back to the date when he had become eligible for such promotion, because vacancy for granting him such promotion was available and he was, in fact, holding the post, though on ad hoc/officiating basis. This position is not, in fact, seriously disputed before me. Reference may, however, be made to *B.S. Yadav and Others Vs. State of Haryana and Others*, *Narender Chadha and Others Vs. Union of India and Others*, *The Direct Recruit Class-II Engineering Officers' Association and others Vs. State*

of Maharashtra and others,

5. Coupled with the above, it is also imperative to note that it has not been contended, on behalf of the State-respondent/authorities concerned, that granting of such promotion, as the petitioner has sought for, would make the petitioner senior to some one, who is not junior to the petitioner as on today.

6. On considering, therefore, the matter in its entirety, I find that the respondent-authorities have completely failed to show any justification for not granting promotion to the petitioner with effect from the date, when he became qualified for receiving promotion, i.e., with effect from 12.5.1998.

7. In the result, and for the reasons discussed above, this writ application succeeds and the respondent-authorities are hereby directed to pass necessary order/orders making the petitioner's promotion to the post of AE(E) effective from 12.5.1998.

8. With the above observations and directions, this writ petition shall stand disposed of Considering, however, the entire facts and circumstances of the case, I leave the parties to bear their respective costs.